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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

OREGON BANKERS ASSOCIATION,
LEWIS & CLARK BANK, BANK OF
EASTERN OREGON, AND PEOPLE'S
BANK OF COMMERCE,

Plaintiffs,

v.

STATE OF OREGON, ELLEN
ROSENBLUM, in her official capacity as
the Attorney General of the State of
Oregon, and ANDREW STOLFI, in his
official capacity as the Director of the
Oregon Department of Consumer and
Business Services,

Defendants.

Case No. 6:20-cv-01375-AA

**UNOPPOSED MOTION TO NOTIFY
COURT OF SUPPLEMENTAL
AUTHORITY**

MOTION AND LR 7-1(a) CERTIFICATION

Defendants hereby move to notify the Court of the recent decision in *Axos Bank v. Ellen F. Rosenblum, Attorney General of the State of Oregon*, Case No. 3:20-CV-01712-HZ, 2020 WL 7344594 (D. Or. Dec. 14, 2020) (attached as **Exhibit A**). Defendants provide this notice pursuant to Federal Rule of Civil Procedure 15(a)(2) and (d) and Local Rule 7-1(e)(3). The parties conferred pursuant to Local Rule 7-1, and Plaintiffs do not oppose the motion.

Under Federal Rule of Civil Procedure 15, “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). Courts have construed this rule as providing a mechanism for parties to provide courts with supplemental authority decided after the parties submitted briefing. *See Nelson v. Network Infrastructure Corp.*, 2010 WL 11515662, at *1 (D. Ariz. Mar. 30, 2010) (considering supplemental authority under Federal Rule of Civil Procedure 15).

At issue in *Axos Bank* was the constitutionality of the same statute at issue in this case, House Bill 4204.¹ Defendants’ Motion to Dismiss (ECF 13) is pending before the Court and will be heard on February 4, 2020. On December 14, 2020, after the parties’ briefing on Defendants’ pending motion before this Court had been completed, Judge Marco A. Hernández issued his decision in *Axos Bank*. Defendants thus move to notify the Court of Judge Hernandez’s decision in *Axos Bank*.

Plaintiffs request the opportunity for supplemental briefing if the Court intends to consider the *Axos Bank* decision or issues it discusses. Plaintiffs propose the following supplemental briefing schedule: (a) Plaintiffs and Defendants each submit supplemental briefs, limited to seven pages, by 5:00 p.m. on January 8, 2020; (b) Plaintiffs and Defendants each submit replies to the supplemental briefs, limited to 5 pages, by 5:00 p.m. on January 15, 2020.

¹House Bill 424 80th Leg., 1st Spec. Sess. (Or. 2020).

Defendants submit that the *Axos Bank* decision speaks for itself, and that no supplemental briefing is necessary before the February 4, 2020 hearing on Defendants' pending motion. However, if the Court determines that supplemental briefing is warranted, Defendants request that any supplemental briefing is limited to three pages per side, submitted no later than January 15, 2020.

DATED this 4th day of January, 2021.

Respectfully submitted,

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/ Steven C. Berman

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